

APPEAL NO. 021334
FILED JULY 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 24, 2002. The hearing officer resolved the disputed issues before her by deciding that the respondent/cross-appellant's (claimant) _____, compensable injury does not extend to and include an episodic neurological disorder (END); that the claimant did not have disability from May 22, 1998, through March 4, 1999, as a result of his compensable injury; that the date of maximum medical improvement (MMI) is March 4, 1999; and, that the claimant's impairment rating (IR) is 28%. The appellant/cross-respondent (self-insured) appealed the hearing officer's decision as to MMI and IR. The file does not contain a response from the claimant. The claimant appealed the hearing officer's decision as to the extent of his compensable injury and period of disability. The self-insured responded, urging affirmance of those determinations.

DECISION

Affirmed as reformed.

Based upon the agreement of counsel for the respective parties at the commencement of the hearing, we reform the hearing officer's decision and order to read that the claimant's IR is 23%.

The Texas Workers' Compensation Commission-appointed designated doctor certified that the claimant reached MMI on September 16, 1999, and that he had an IR of 31%. Included in the IR was 10% for END. The parties agreed that statutory MMI in this case was March 4, 1999, and that pursuant to the designated doctor's certification, if END is determined to be compensable, the claimant's IR would be 31%, and if it is not compensable, the claimant's IR would be 23% pursuant to that same certification.

On appeal, the self-insured asserts that the hearing officer made a typographical error in finding the claimant's IR to be 28%, and that he should have been found to be at MMI on February 23, 1998, the date the claimant returned to work for regular duty. As we have reformed the hearing officer's decision and order with respect to IR, we will not discuss IR further. As for the assertion that the claimant should have been found to be at MMI on the date he returned to his regular duties, we do not agree. The self-insured incorrectly appears to equate a certification of MMI with an end to disability. The issues of disability and MMI are distinct and different concepts under the 1989 Act. See Texas Workers' Compensation Commission Appeal No. 91060, decided December 12, 1991. A claimant's disability (i.e., the inability to obtain and retain employment) may end before the claimant reaches MMI and, conversely, disability may continue even after a claimant reaches MMI, although, pursuant to Sections 408.101 and 408.102, entitlement to temporary income benefits ends when MMI is reached. See Texas

Workers' Compensation Commission Appeal No. 991091, decided July 5, 1999. Upon review of the record, we find the hearing officer's decision that the claimant reached MMI on March 4, 1999, supported by sufficient evidence to be affirmed.

As for the claimant's appeal regarding extent of injury and disability, these issues presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). There was conflicting evidence presented on the disputed issues. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed as reformed herein.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MAYOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge